

1 HOUSE BILL 195  
2 45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002  
3 INTRODUCED BY  
4 Danice R. Picraux  
5  
6  
7 FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE AND  
8 THE LEGISLATIVE HEALTH SUBCOMMITTEE  
9  
10 AN ACT  
11 RELATING TO THREATENING COMMUNICABLE DISEASES; PROVIDING FOR  
12 THE REPRESENTATION BY COUNSEL OF THE DETAINEE; CLARIFYING  
13 BURDEN OF PROOF REQUIREMENTS; REQUIRING THE SEALING OF RECORDS  
14 OF THE PROCEEDINGS; AMENDING A SECTION OF THE NMSA 1978.  
15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:  
17 Section 1. Section 24-1-15 NMSA 1978 (being Laws 1973,  
18 Chapter 359, Section 15, as amended) is amended to read:  
19 "24-1-15. REPORTING OF CONTAGIOUS DISEASES. --  
20 A. ~~[Whenever any]~~ When a physician or other person  
21 knows that ~~[any]~~ a person is ~~[sick with any disease dangerous~~  
22 ~~to the public health]~~ infected with a threatening communicable  
23 disease, he shall promptly notify a public health official or  
24 his authorized agent.  
25 B. A public health official who has knowledge that  
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1 a person is [~~currently~~] infected with a threatening  
2 communicable disease and has refused voluntary treatment,  
3 detention or observation shall petition the court for an order  
4 to detain [~~and treat~~] the person who is infected with the  
5 threatening communicable disease until the person is no longer  
6 a contagious threat to the public or the person voluntarily  
7 complies with the appropriate treatment and contagion  
8 precautions.

9 C. The petition shall be made under oath or shall  
10 be accompanied by a sworn affidavit setting out specific facts  
11 showing that the person is infected with a threatening  
12 communicable disease.

13 D. The petition shall state that the person to be  
14 detained:

15 (1) is actively infectious with a threatening  
16 communicable disease or presents a substantial likelihood of  
17 having a threatening communicable disease based on credible  
18 medical evidence;

19 (2) poses a substantial likelihood of  
20 transmission of the threatening communicable disease to others  
21 because of inadequate separation from others; and

22 (3) after being advised of his condition and  
23 the risks posed thereby, has refused voluntary treatment.

24 E. Upon the filing of a petition the court shall:

25 (1) immediately grant ex parte a temporary

1 order of protection to isolate ~~[and begin treating]~~ the person  
2 infected with the threatening communicable disease if there is  
3 probable cause from the specific facts shown by the affidavit  
4 or by the petition to give the judge reason to believe that  
5 the person infected with a threatening communicable disease  
6 poses a substantial threat to the public health and safety;

7 (2) cause the temporary order of protection,  
8 notice of hearing and an advisement of the terms of the  
9 temporary protective order, including his right to  
10 representation and re-petition for termination of any  
11 protective order that removes and detains ~~[and treats]~~ the  
12 infected person, to be immediately served on the allegedly  
13 infected person; and

14 (3) within five days after the granting of  
15 the temporary order of protection, hold an evidentiary hearing  
16 to determine if the court shall continue the order.

17 F. A person held pursuant to a temporary  
18 protective order as set forth in Subsection E of this section  
19 shall be:

20 (1) entitled to representation by counsel at  
21 the evidentiary hearing and at all hearings thereafter for the  
22 duration of the period of removal and detention ~~[and~~  
23 ~~treatment]~~; and

24 (2) permitted to communicate on any matter,  
25 including his removal and detention ~~[and treatment]~~, with

1 persons by telephone, or other reasonably available means,  
2 that do not expose other persons to the risk of infection for  
3 the duration of the period of removal and detention [~~and~~  
4 ~~treatment~~].

5 G. Counsel may be retained by the person held or  
6 shall be appointed by the court if the court determines that  
7 the person held cannot afford legal representation or if the  
8 court determines that appointment of counsel is required in  
9 the interest of justice.

10 [~~G.~~] H. At the evidentiary hearing the court shall  
11 review the circumstances surrounding the temporary order and,  
12 [order] if the petitioner can show by clear and convincing  
13 evidence that the person being held has not voluntarily  
14 complied or will not voluntarily comply with appropriate  
15 treatment and contagion precautions, the court may continue  
16 the detention of the person infected with a threatening  
17 communicable disease. The court shall order regular review of  
18 the order to detain by providing the person being held with a  
19 subsequent hearing within ninety days of the temporary order's  
20 issuance and every ninety days thereafter. [until] The  
21 detention order shall be terminated and the person shall be  
22 released if:

23 (1) the person being held [~~and treated~~  
24 ~~completes his treatment and~~] is certified by a public health  
25 official to pose no further risk of infecting others;

1 (2) ~~[the person being held and treated can]~~  
2 at a hearing, the petitioner, whose burden of proof continues  
3 under a clear and convincing standard, can no longer show [by  
4 ~~clear and convincing evidence]~~ that ~~[he can and]~~ the person  
5 being held is infected with a threatening communicable disease  
6 and that he will not comply with appropriate treatment and  
7 contagion precautions voluntarily; or

8 (3) exceptional circumstances exist  
9 warranting the termination of the temporary protective order.

10 ~~[H-]~~ I. The provisions of this section do not  
11 permit the forcible administration of ~~[any other]~~ medications  
12 ~~[not reasonably required for the treatment of the threatening~~  
13 ~~communicable disease without a prior court order]~~.

14 J. The proceedings shall be recorded  
15 stenographically, electronically, mechanically or by other  
16 appropriate means. The proceedings shall be closed to the  
17 general public and the records shall be sealed from public  
18 inspection.

19 K. A person who in good faith reports another  
20 person infected with a threatening communicable disease shall  
21 not be held liable for civil damages as a result of the  
22 report; provided that the person reported as being infected  
23 with a threatening communicable disease shall have the right  
24 to sue for damages sustained as a result of negligent or  
25 intentional reporting of inaccurate information or the

disclosure of information to an unauthorized person.

[I.] L. For purposes of this section:

(1) "court" means the district court of the judicial district where the person who is alleged to be infected with a threatening communicable disease resides or is found;

(2) "public health official" means a district health officer, the director of the public health division of the department of health, a chief medical officer or a person designated by the secretary of health to carry out the duties provided in this section; and

(3) "threatening communicable disease" means a [~~deadly~~] disease that causes death or great bodily harm, passes from one person to another and for which there is no means by which the public reasonably can avoid the risk of contracting the disease. "